



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 04, 2022

IN THE MATTER OF:

Appeal Board No. 622784

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board No. 622784, the appeals from the decision of the Administrative Law Judge filed November 24, 2021, which sustained the initial determination disqualifying the claimant from receiving benefits, effective March 26, 2020, on the basis that the claimant voluntarily separated from employment without good cause.

In Appeal Board No. 622785, the claimant appeals from the decision of the Administrative Law Judge filed November 24, 2021, which sustained the initial determination charging the claimant with an overpayment of \$6724 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of Pandemic Emergency Unemployment Compensation of \$7700 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$15,600 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

In Appeal Board No. 622786, an appeal was processed from the decision of the Administrative Law Judge filed November 24, 2021, which overruled the initial determination reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$4515.60 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a full-time cashier in a supermarket from October 2018 until March 25, 2020. The claimant spoke Nepali and her understanding of English was limited. Whenever the accountant/scheduler spoke to the claimant she used the floor manager who also spoke Nepali to translate.

On March 26, 2020, the claimant came down with the symptoms of COVID-19. She spoke to the floor manager, who told her she could return to work when she was better. The floor manager advised the claimant to speak with the accountant/scheduler about returning to work. The claimant quarantined for two weeks. In mid-April the claimant contacted the accountant/scheduler and told her that the claimant wanted to return to work. The conversation was in English. The accountant/scheduler told the claimant that there was nothing available, but they would call her when they needed employees. The claimant thereafter was in regular contact with the floor manager about returning to work. In September the claimant was contacted about signing paperwork so that her final paycheck could be released. The claimant was not offered work at that time and so she filed a claim for unemployment benefits in September 2020. In October 2020 the claimant was contacted about returning to work, which she accepted. She was not provided with a schedule and did not return to her job.

The claimant received all benefits at issue.

**OPINION:** There was no appeal of the judge's decision overruling the initial determination reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$4515.60 on the basis that the claimant made willful misrepresentations to obtain benefits. The appeal in Appeal Board No. 622786 is therefore dismissed.

The credible evidence in Appeal Board Nos. 622784 and 622785, establishes that the claimant did not quit her employment but rather took time off work due to illness, and that she intended to return to work after her quarantine period ended. We credit the claimant's testimony over that of the accountant/scheduler. We note that the accountant/scheduler's testimony was contradictory and that the witness admitted that she couldn't remember with specific detail the dates when conversations occurred. She testified at one point that she had no conversation with the claimant in April, but then that he spoke to the claimant in April, or May. She does remember a conversation with the claimant and telling the claimant that she would call the claimant when the employer needed employees. She also testified that she spoke with the claimant in October about returning to work and that the claimant turned her down, but then that it was the floor manager who spoke with the claimant about returning to work and it was in that communication with the floor manager when the claimant refused work. The accountant/scheduler also admits that when she spoke with claimant she usually used the floor manager as a translator, but that she spoke to claimant in English when she had conversations with claimant after April, even though claimant had limited understanding of English.

Under these circumstances, we conclude that the claimant did not quit her employment but that she intended on returning to her employment once her quarantine was over.

As the claimant did not quit her employment, she was entitled to the benefits she received.

**DECISION:** In Appeal Board Nos. 622784 and 622785, the decisions of the Administrative Law Judge are reversed.

In Appeal Board Nos. 622784 and 622785, the initial determinations disqualifying the claimant from receiving benefits, effective March 26, 2020, on the basis that the claimant voluntarily separated from employment without good cause and charging the claimant with an overpayment of \$6724 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of Pandemic Emergency Unemployment Compensation of \$7700 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$15,600 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), are overruled.

In Appeal Board No. 622786, the appeal of the decision of the Administrative Law Judge, is dismissed.

In Appeal Board No. 622786, the decision of the Administrative Law Judge, which overruled the initial determination reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$4515.60 on the basis that the claimant made willful misrepresentations to obtain benefits, is continued in effect.

The claimant is allowed benefits with respect to the issues decided herein.  
(Al reclamante se le asignan beneficios con respecto a los temas decididos en el presente.)

JUNE F. O'NEILL, MEMBER